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November 18, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
c/o Visitronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Interstate Telecommunications Cooperative, Inc. (South Dakota and Minnesota)
Petition for Waiver of Default Payphone Compensation Requirements
Under Sections 64.1301(a),(d) and (e)

Please find enclosed for filing the original and 4 copies of Interstate Telecommunications Cooperative's Petition for Waiver of Sections 64.1301(a), (d) and (e) as delivered by their consultant, John Staurulakis, Inc. (JSI).

The filing is made by and signed by Interstate Telecommunications Cooperative, Inc. Should you have any questions regarding this matter, please call Mr. Jerry Heiberger, General Manager for Interstate Telecommunications Cooperative, Inc. at 605-874-2181.

Sincerely,

Scott Duncan
Consultant for Interstate Telecommunications Cooperative, Inc.
John Staurulakis, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the)	
Pay Telephone Reclassification and)	CC Docket No. 96-128
Compensation Provisions of the)	
Telecommunications Act of 1996)	

PETITION FOR WAIVER OF SECTIONS 64.1301(a), (d) AND (e)

Interstate Telecommunications Cooperative, Inc. ("Interstate Telecommunications Cooperative, Inc."), pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules¹, hereby requests a waiver of Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules² to exclude Interstate Telecommunications Cooperative, Inc. from the requirement to pay default compensation to payphone service providers. Because Interstate Telecommunications Cooperative, Inc. is an ILEC, Interstate Telecommunications Cooperative, Inc. is included among the universal group of ILECs subject to Section 64.1301 by inclusion of "ILEC" on Appendices A, B and C of the Commission's *Fifth Reconsideration Order* in CC Docket No. 96-128³, Interstate Telecommunications Cooperative, Inc. is currently subject to the requirement to pay default compensation to payphone providers for compensable calls.

¹ 47 C.F.R. § 1.3

² 47 C.F.R. §§ 64.1301(a), 64.1301(d) and 64.1301(e).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Fifth Order on Reconsideration and Order on Remand*, FCC 02-292 (Rel. Oct. 23, 2002) (*Fifth Reconsideration Order*).

Because Interstate Telecommunications Cooperative, Inc. does not carry compensable calls, Interstate Telecommunications Cooperative, Inc. respectfully requests that the Commission waive the requirement under Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules for Interstate Telecommunications Cooperative, Inc. to make default payments to payphone service providers.

Interstate Telecommunications Cooperative, Inc. is an incumbent local exchange carrier (ILEC) serving approximately 14,200 customers in rural South Dakota and Minnesota. On August 19, 2003, Interstate Telecommunications Cooperative, Inc. received a letter and invoice from APCC Services, Inc. ("APCC"). Said letter indicates that APCC is rendering an invoice to Interstate Telecommunications Cooperative, Inc. for payphone compensation owed to the payphone service providers ("PSPs") pursuant to the Commission's "True-Up Order" (*Fifth Reconsideration Order*).

1. **A key determination by Commission regarding compensable calls is that an ILEC must carry a call in order to be responsible for payment.**

The *Fifth Reconsideration Order* was intended to bring a "measure of finality" regarding the contentious history of payphone compensation. One purpose of the Commission's action was to ensure that payphone service providers (PSPs) receive fair compensation for every call made using their payphones. The Commission has concluded that Section 276 requires it to "ensure that per-call compensation is fair, which implies fairness to both sides."⁴

In pursuit of this objective and a fundamental criterion to the Commission's rules regarding payphone compensation was to ensure that local exchange carriers ("LECs")

⁴ *Fifth Reconsideration Order*, at 82.

“pay payphone compensation to the extent that they handle compensable payphone calls.”⁵ This is a threshold criterion that must be satisfied prior to placing a burden for PSP payment on any LEC. Absent satisfying this threshold criterion, a carrier would be responsible to pay for a compensable call that it did not handle. Clearly such result would not be a fair result for the LEC.

The Commission explained how a LEC can handle compensable communications.

- a. When a LEC terminates a compensable call that is both originated within its own service territory and not routed to another carrier for completion,
- b. When a LEC also provides interexchange service and carries the call as would any other IXC.

2. The Commission’s default payphone compensation regime for ILECs is based exclusively on RBOC data that does not reflect Interstate Telecommunications Cooperative, Inc.’s lack of compensable calls.

Based on at least two data requests initiated by the Commission and directed solely to the RBOCs, the Commission determined that incumbent LECs complete payphone calls that are not routed to other carriers. The RBOC data apparently shows that 2.19 percent of all compensable payphone calls are handled by the RBOCs. The Commission also noted that no other incumbent LEC objected to this data. The Commission concluded that it is appropriate to allocate to “both RBOC and non-RBOC incumbent LECs a percentage of the calls (2.19%) originating from payphones within their own service territories.” Interstate Telecommunications Cooperative, Inc. did not have cause to object to this data because clearly the Commission was directing its efforts

⁵ *Fifth Reconsideration Order*, at 55 (Emphasis supplied)

at determining the percentage for “carriers” – those entities who carry compensable communications. As will be shown below, Interstate Telecommunications Cooperative, Inc. does not carry any compensable calls. Thus the application of the allocation percentage in the case of Interstate Telecommunications Cooperative, Inc. is inappropriate.

3. Interstate Telecommunications Cooperative, Inc. never carries compensable calls.

A compensable call is defined by the Commission as a call from a payphone user who calls a toll-free number, dials an access code, or uses a pre-paid calling card without placing any money into the payphone.⁶ Because of its operation as an access provider, Interstate Telecommunications Cooperative, Inc. does carry any compensable communications. All compensable calls originating from payphones within the Interstate Telecommunications Cooperative, Inc. service area are passed on to other carriers who pay interstate or intrastate, as the case may be, originating access charges. Any compensable calls terminated by Interstate Telecommunications Cooperative, Inc. within its service area are received from other carriers who pay interstate or intrastate, as the case may be, terminating access charges. Thus, Interstate Telecommunications Cooperative, Inc. does not carry individual compensable calls that both originate and terminate within Interstate Telecommunications Cooperative, Inc.’s LEC service area or are carried by Interstate Telecommunications Cooperative, Inc. as an IXC that are subject to compensation under the criteria established in the *Fifth Reconsideration Order* for either a LEC or an IXC.⁷ Any compensable call terminating in Interstate

⁶ *Fifth Reconsideration Order*, at 3

⁷ *Id.*, at 55.

Telecommunications Cooperative, Inc.'s service area would have to be an IXC-carried call.⁸ Assuming that Interstate Telecommunications Cooperative, Inc. handles compensable calls and requiring it to pay for compensable calls that never handles is not a fair compensation mechanism.

4. The Fifth Reconsideration Order provides a mechanism for entities to be removed from the allocation percentage appendices.

Appendices A, B and C of the *Fifth Reconsideration Order* list "carrier" allocation percentages for default compensation factors for, respectively, interim access code and subscriber 800 calls (November 7, 1996 through October 6, 1997), intermediate access code and subscriber 800 calls (October 7, 1997 through April 20, 1999) and post-intermediate access code and subscriber 800 calls (April 21, 1999 forward). In the *Fifth Reconsideration Order*, the Commission noted that entities listed on Appendices A, B, or C could file a petition for a waiver with the Wireline Competition Bureau -- such as the instant waiver request -- for exclusion from the Commission's allocation. Note 89 states:

... Any entity named in our allocation that then receives a request for per payphone compensation from a PSP or other entity may, within ninety (90) days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from our allocation, with a demonstration that the entity provides no communications service to others.⁹

As has been demonstrated above, while Interstate Telecommunications Cooperative, Inc. provides communications services, it never provides compensable communications

⁸ Interstate Telecommunications Cooperative, Inc.'s affiliate, ITC Long Distance is an IXC providing long distance service as a reseller. ITC Long Distance is not included on Appendices A, B and C of the *Fifth Reconsideration Order*. As a carrier not included on Appendices A, B and C, CITC Long Distance, Interstate Telecommunications Cooperative, Inc.'s IXC affiliate, is not subject to default payphone compensation.

⁹ *Fifth Reconsideration Order*, Note 89

service to others and is a non-carrier as defined by the *Fifth Reconsideration Order*.¹⁰ Accordingly, Interstate Telecommunications Cooperative, Inc. requests within 90 days of receipt of its only request for compensation, that from APCC, that it be removed from the Commission's allocation appendices.

5 Interstate Telecommunications Cooperative, Inc.'s petition for waiver meets the Commission's standards for granting a waiver of its rules.

Under section 1.3 of the Commission's Rules, any provision of the rules may be waived if "good cause" is shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.¹¹ Payment of payphone compensation by Interstate Telecommunications Cooperative, Inc. absent compensable calls that both originate and terminate within Interstate Telecommunications Cooperative, Inc.'s network, whereby Interstate Telecommunications Cooperative, Inc. does not collect any revenue for the call, apart from revenue under the applicable interstate or intrastate access charge regime, would be inconsistent with the public interest. Additionally, payment of compensation under such circumstances would undermine the policy that entities benefiting from the carrying of compensable payphone originating calls should pay compensation to payphone providers. Moreover, it would be burdensome and inequitable for Interstate Telecommunications Cooperative, Inc. and, in turn, its customers to bear the cost of

¹⁰ *Id.*, Note 3.

¹¹ *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio"), *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

default payment compensation when Interstate Telecommunications Cooperative, Inc. carries no compensable calls¹²

CONCLUSION

For the foregoing reasons, Interstate Telecommunications Cooperative, Inc. respectfully requests that the Commission waive Sections 64.1301(a), 64.1301(d) and 64.1301(e) and thereby not include Interstate Telecommunications Cooperative, Inc. among the entities listed on Appendices A, B and C of the *Fifth Reconsideration Order* required to pay default compensation to payphone service providers. The requested waiver will serve the public interest by allowing Interstate Telecommunications Cooperative, Inc. to avoid payment of charges for which no related benefit accrues to Interstate Telecommunications Cooperative, Inc. given that Interstate Telecommunications Cooperative, Inc. does not carry payphone originated compensable calls.

Respectfully Submitted,

Interstate Telecommunications Cooperative, Inc.

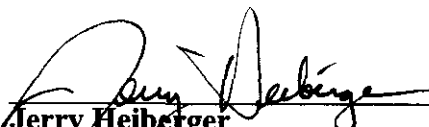


Jerry Heiberger
General Manager

¹² See *Wait Radio*, 418 F.2d at 1159. The petitioner must demonstrate, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest

DECLARATION OF JERRY HEIBERGER

I, Jerry Heiberger, General Manager of Interstate Telecommunications Cooperative, Inc. do hereby declare under penalties of perjury that the information contained in the foregoing "Petition for Waiver" is true and accurate to the best of my knowledge, information and belief.



Jerry Heiberger
General Manager

Date: November 14, 2003

Tracy Bandemer
Notary

My Commission Expires:
September 10, 2007